IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO.2630 of 2005

Between:

M/s Ghousia Slabs Polishing Industries, Rep. by its Proprietor S. Maqbul Basha, S/o S. Ghouse, aged 42 years, R/o Betamcherla, Kurnool District.

...PETITIONER

AND

1. The Commissioner of Commercial Taxes, Government of Andhra Pradesh, Office at Nampally, Hyderabad.
2. The Deputy Commercial Tax Officer, Betamcherla, Kurnool District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction, more specifically in the nature of writ of Mandamus declaring the action of the respondent No.2 demanding the tax without a valid service of demand notice and refusing to furnish the certified copies of the assessment order by his letter dated 20.01.2005 as illegal, void and ultra vires.

Counsel for the Petitioner: MS.NASEEB AFSHAN

Counsel for the Respondents: SPL GP FOR TAXES

The Court at the stage of admission made the following:

THE HON'BLE MR JUSTICE M.H.S.ANSARI

and

THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO.2630 of 2005

ORDER: (Per the Hon'ble Mr.Justice M.H.S.Ansari)

Having heard the learned counsel for the petitioner, we are inclined to dispose of the instant Writ Petition at the admission stage for the reasons stated hereinafter.

The only grievance of the petitioner appears to be with respect to the refusal on the part of the respondent-authorities in furnishing certified copies of the assessment orders for the years 1999-2000 and 2000-2001. It appears that a demand was raised upon the petitioner for the said assessment years in question, whereupon the petitioner addressed a letter dated 03.01.2005 to the second respondent. It was *inter alia* alleged that no assessment has been made and if any *ex parte* orders have been passed, certified copies thereof may be furnished. In reply thereto, an endorsement dated 20.01.2005 was communicated to the petitioner stating that show cause notices were served and as no reply was received, orders have been passed and assessment orders have also been served by affixture to the factory

pertaining to the assessment year

1999-2000 and by personal service with respect to the subsequent assessment year 2000-2001. For that reason, it was further stated that granting of certified copies of assessment orders does not arise. The petitioner has made an application on 28.01.2005 enclosing copy stamps for issuing certified copies. The said application is pending before the second respondent.

It cannot be disputed that the assessee has a right to obtain certified copies and even if it is to be accepted for the sake of arguments that assessment orders were served in the manner stated in the endorsement, that cannot be a ground to deny furnishing of the certified copies to the assessee when applied for.

We are not inclined to adjudicate in these proceedings. The disputed question as to whether assessments were made after due service of show cause notices or that the assessment orders have been duly served in the manner stated by the second respondent, it is a matter which can be agitated in appropriate proceedings if and when the same are initiated.

In the circumstances, the Writ Petition is being disposed of with a direction upon the second respondent to furnish certified copies of the assessment orders for the assessment years 1999-2000 and 2000-2001 within a period of one week from the date of communication of this order. It is clarified that furnishing of such certified copies of assessment orders shall be without prejudice to the rights and contentions of the

respondent-authorities as to the limitation or otherwise, howsoever, with regard to

the appeals, if any, that may be filed by the assessee in respect of the said assessment orders. It is further clarified that it shall be open to the appellate authority to consider the question of limitation in the light of the contentions that may be raised by the respective parties before it.

A prayer is made to stay the recovery of the impugned demand of Rs.4,50,135/- (Rupees four lakh fifty thousand one hundred and thirty five only).

We are inclined to direct that if petitioner deposits Rs.50,000/- (Rupees fifty thousand only) towards tax within a period of one week from date hereof, there shall be stay of recovery of the balance impugned demand for a period of four weeks from date hereof. Thereafter, it shall be open to the respondents to effect recovery in accordance with law, subject to any interim orders, if any, passed by the appellate authorities.

The Writ Petition is accordingly disposed of. No order as to costs.

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(M.H.S.ANSARI,J)

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(T.CH.SURYA RAO ,J)

16th February 2005

NOTE: Issue copy on Priority Basis

B/O

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Commissioner of Commercial Taxes, Government of Andhra Pradesh, Office at Nampally, Hyderabad.
2. The Deputy Commercial Tax Officer, Betamcherla, Kurnool District.
3. Two CCs to Special G.P. for Taxes, High Court Buildings, Hyderabad (OUT).
4. Two CD copies.